



*PCB 76-104*

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DATE: November 15, 1976

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Mr. P. Scott Courtin  
Reid, Ochsenschlager et al  
75 South Stolp  
Aurora, Illinois 60545

Mrs. Dolores Thom  
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Montgomery, Illinois 60538

Mrs. Rose K. Phillips  
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Box 148  
Oswego, Illinois 60549

PCB76-104

ENVIRONMENTAL PROTECTION  
AGENCY v. D & N TRUCKING  
DAVID H. THOM, ROSE K. PHILLIPS  
AND DOLORES THOM

Enclosed please find a certified copy of the OPINION AND ORDER  
of the Board adopted on November 10, 1976 in the above captioned matter

Very truly yours,

*Christan L. Moffett*  
Christan L. Moffett  
Clerk of the Board

EPA Region 5 Records Ctr.



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Copies also to: Mr. Jeffery R. Diver, Deputy Director, Illinois EPA (6)  
Mr. Richard W. Cosby, Chief, Environmental Control Division

ILLINOIS POLLUTION CONTROL BOARD  
November 10, 1976

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 76-104
	)	
D & N TRUCKING, INC., an Illinois	)	
Corporation, DAVID H. THOM,	)	
ROSE K. PHILLIPS and DOLORES THOM,	)	
	)	
Respondents.	)	

Ms. Helga Huber, Assistant Attorney General, appeared on behalf of the Complainant.

Mr. Arthur Brody appeared on behalf of Rose K. Phillips and Mr. P. Scott Courtin appeared on behalf of D & N Trucking, Inc., David H. Thom and Dolores Thom.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Pollution Control Board (Board) upon a complaint filed by the Environmental Protection Agency (Agency) on April 16, 1976. Subsequently amended complaints were filed on July 9, 1976 and August 10, 1976. The second amended complaint alleges that Respondents Mrs. Rose K. Phillips and Mrs. Dolores Thom own and Respondents David H. Thom and D & N operate a refuse disposal site located in Section 32 of Township 38 North, Range 8 East of the Third Principal Meridian in Kane County, Illinois in violation of Rule 202(b)(1) of the Solid Waste Regulations (Regulations) and Section 21(e) of the Environmental Protection Act (Act). It was further alleged that Respondents were issued a development permit on March 18, 1975 after which the conditions thereon were violated in violation of Rule 302 of the Regulations and Section 21(b) of the Act; that Respondents did not deposit all refuse in the toe of the landfill in violation of Rule 303(a) of the Regulations and Section 21(b) of the Act; that Respondents failed to compact and spread refuse as rapidly as it was deposited in violation of Rule 303(b) of the Regulations and Section 21(b) of the Act; that Respondents failed to place daily cover, intermediate cover and final cover in violation of Rules 305(a), 305(b), and 305(c) of the Regulations and Section 21(b) of the Act; that Respondents failed to limit access to the site in violation of Rule 314(c) of the Regulations and Section 21(b) of the Act; and that Respondents failed to provide for concealing sanitary

landfill operations from public view in violation of Rule 314(h) and Section 21(b) of the Act. Respondent, D & N Trucking, was also the Respondent in PCB 74-390 a permit enforcement case on the same site.

A hearing was held on September 29, 1976 at Geneva, Illinois. At this time a Stipulation and Proposal for Settlement was presented for the approval of the Board. No citizen testimony was given.

The stipulated facts are as follows. D & N Trucking, Inc. is an Illinois corporation doing business in Kane County. Respondent, David H. Thom, is the registered agent and president of D & N Trucking. The refuse disposal site in question is approximately thirteen (13) acres in size and is located at U.S. Route 30 and Albright Road in Montgomery, Illinois. D & N has operated the site from September 1974 to May 1, 1976. Of the thirteen (13) acres involved at the site approximately 8.75 acres have been leased from Respondent Rose K. Phillips by both D & N and David H. Thom under a lease with an expiration date of September 19, 1976. Approximately 4.25 acres of the site are owned by Respondent Dolores Thom. Residential development exists north of the site and industrial development to the northeast and east. The area to the west and north of the site is wooded or used for agricultural purposes.

On January 16, 1975 D & N applied for a development permit to operate the site as a landfill accepting heterogeneous construction and demolition wastes. On March 18, 1975 D & N was issued a development permit with conditions allowing acceptance of only "clean earthen materials, Portland cement, concrete waste, bricks and mortar and asphaltic concrete waste" and specifically excluded were "putrescible, combustible, liquid or metallic wastes." Further permit conditions were to deposit all wastes at the toe of the fill slope and to install devices for continuous limitation of site access.

Agency inspectors visited the site on nineteen different dates from December 18, 1974 to July 6, 1976. On six dates from January 21, 1975 to May 10, 1976 the Agency sent letters to D & N describing the observed operational deficiencies. D & N made two responses, January 31, 1975 and March 1, 1976. On April 14, 1975 D & N's engineer requested by letter that the Agency reconsider the permit conditions. The request was treated as an application for a supplemental development permit and was denied by the Agency on April 18, 1975.

It was further stipulated that upon the filing of the complaint settlement discussions were immediately initiated by D & N. D & N ceased operating on or about May 1, 1976. Since that date the site has been closed.

D & N stipulated that the refuse disposal business, in fiscal year 1974, derived a gross income of \$146,995. There was no taxable income for that year. For fiscal year 1975 D & N's gross income was \$180,707. D & N's taxable income for the same year was \$23,217. To perform the work in the proposed settlement the estimated cost is between \$20,000 and \$30,000 if D & N performs the work itself.

D & N admits operating its landfill from September 1974 to May 1, 1976 without an operating permit. D & N further stipulates that it has been at all times technically and economically feasible to follow the conditions of the development permit and to comply with Rules 303(a), 303(b), 305(a), 305(b), 305(c), 314(c) and 314(h) of the Solid Waste Rules.

To remedy this situation the Respondents agreed to cease and desist use of the site. They further agreed to place two feet or more of finely-grained earthen material having a permeability factor of  $1 \times 10^{-7}$  cm/sec. or less on the area extending 380 feet north to south and 300 feet west to east as outlined on Exhibit 7. Finely grained earthen material having a permeability factor of  $7.6 \times 10^{-7}$  cm/sec. may be used as final cover provided that three feet of material is applied. At least 18 inches of this final cover will be applied by November 30, 1976. The remaining cover will be applied no later than June 30, 1977. The entire area will be graded to eliminate inadequate drainage and alleviate any ponding on the site.

It was further agreed by the parties that monitoring wells #1 and #2, located in the center and the northeast portions of the site, respectively, shall be maintained. Four new monitoring wells will be installed at designated sites. A representative of the Agency shall be present during drilling, water level measurement and casing. A professional engineer's certification of the casing head elevations and water level measurements shall be provided to the Agency. The aforementioned well #1 and upon completion four new monitoring wells shall be sampled for the following parameters: pH, aluminum, copper, nickel; manganese, and total dissolved solids. Thereafter, these wells will be sampled quarterly for a period of three years commencing from the date of Board approval. All analysis reports will be forwarded to the Agency.

D & N has further agreed to install fencing or gates at the site to limit access.

The settlement agreement also provides for the issuance of two performance bonds by D & N within 30 days of a Board order. One bond for \$45,000 is to guarantee placement of cover, grading the site, and installation of the wells. If D & N completes this work within 30 days of the order the bond will not be required. The second bond for \$5,000 is to guarantee the performance of the sampling program. The Agency shall release 1/3 of the \$5,000 each year until the sampling program is completed.

D & N agrees to a penalty of \$3,000 for operating without a permit and any other violations found based on this stipulation.

Respondents, Rose K. Phillips and Dolores Thom, agree to permit access to the refuse disposal site for the purpose of completing the work described herein and agree not to hinder the performance of such work.

Under Procedural Rule 333 the Board finds the stipulation acceptable. The Board finds, based on the stipulation, that Respondent D & N Trucking has been in violation of Rule 202(b)(1) of the Regulations and Section 21(e) of the Act for operating a refuse disposal site without a permit. Exhibits 4-A through 4-V referenced into the stipulation on page 3 indicate probable violations of the remaining violations alleged in the complaint, however, those exhibits are not stipulated facts. The Board dismisses without prejudice the remaining allegations of the complaint. The Board notes that closing the site will remedy most of the environmental harm. The monitoring wells would then be an adequate indicator of the need for further corrective measures.

Respondent David H. Thom is dismissed without prejudice for lack of prosecution. Respondents David H. Thom, Rose K. Phillips and Dolores Thom do not admit violations but agree to be bound by the stipulation. Rose K. Phillips and Dolores Thom are therefore dismissed without prejudice conditioned upon their compliance with the stipulated agreement.

Respondent D & N Trucking is assessed a penalty of \$3,000 and shall comply with all provisions of the agreement.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

It is the order of the Pollution Control Board that:

1. Respondent D & N Trucking is found to be in violation of Rule 202(b)(1) of the Solid Waste Regulations and Section 21(e) of the Act. All other allegations of the complaint are dismissed.
2. D & N Trucking shall cease and desist all further violations.
3. David H. Thom is dismissed as a respondent without prejudice.
4. Dolores Thom and Rose K. Phillips are dismissed without prejudice subject to their compliance with the settlement agreement.
5. Within 30 days of this order D & N Trucking shall post two performance bonds, a \$45,000 bond and a \$5,000 bond, in accordance with the stipulated agreement and this opinion. 12/10/76
6. D. & N Trucking, Inc. shall pay within 35 days of this order a penalty of \$3,000 for the said violation. Payment shall be by certified check or money order payable to: 12/15/76

State of Illinois  
Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, Illinois 62706

7. Respondents shall comply with the water monitoring and all other provisions of the stipulated agreement.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10<sup>th</sup> day of November 1976 by a vote of 5-0.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board